

## REMARKS

Applicants thank Examiner O'Hern for the analysis set forth in the final Office Action dated May 7, 2010. As noted in the Office Action, the rejections set forth in the previous Office Action mailed September 4, 2009, were withdrawn. However, new objections and rejections were presented, as will be discussed below. Applicants have amended Claim 1 and added new Claims 11-18. Claims 1 and 4-18 are therefore now pending in the present application. Reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

### Objection to the Specification

The Office Action objected to the specification as allegedly failing to provide proper antecedent basis for the claimed subject matter because support for a mat having a thickness of "3 or 4 inches" was felt to be lacking. The "Variations" section of the application as filed (see text on page 4, starting at line 25, and, in particular, as it continues at page 5, lines 1-2) states that a convenient size of the mat "is 1 foot wide, 3 inches thick and between 4 and 10 feet long." This is acknowledged in the Office Action at page 3, paragraph 7. Applicants have amended Claim 1 to delete "or 4" such that the claim now recites "a thickness of 3 inches." In this regard, the specification clearly provides antecedent basis for Claim 1.

The Office Action also alleged that support in the specification for the term "extending continuously" in Claim 1 is lacking. This feature is shown in the drawings; see FIGURES 1 and 2, which form part of the application as filed. This feature is also implied in the description, but to make the term explicit, applicants have amended the specification as presented herewith. The amendments do not constitute new matter in view of the drawings and the original disclosure.

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>LLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100

Accordingly, applicants submit that the specification provides a proper antecedent basis for the claimed subject matter and respectfully request withdrawal of this objection.

Claim Rejection Under 35 U.S.C. § 112

The Examiner rejected Claims 1 and 4–10 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description requirement because it was felt that the claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The Examiner noted that although applicants' amendment filed February 4, 2010, asserted that support was present in the "Examples," the examples did not describe a slab having a thickness of 3 or 4 inches.

Applicants have amended Claim 1 to delete "or 4" such that the claim now recites "a thickness of 3 inches." As noted above, the Variations section of the present application states that the access mats may be sized to be placed under drilling rigs for leveling and stabilization purposes and that, in such a case, a convenient size of the mats "is 1 foot wide, 3 inches thick and between 4 and 10 feet long."

Because the subject matter as claimed in amended Claim 1 was described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention, applicants respectfully request withdrawal of the 35 U.S.C. §112 rejection.

Claim Rejection Under 35 U.S.C. § 103

Claims 1 and 4–10 currently stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kent (U.S. Patent No. 5,924,694) in view of Crook (U.S. Patent No. 5,482,754).

Applicants respectfully submit that Kent ('694) does not teach a rubber mat, as is asserted in the Office Action. Instead, Kent teaches a "ballistic target" and simply has nothing at all to say about "access mats." As such, the Office Action's reliance on Kent is improper as a person of ordinary skill in the relevant art of "access mats" would not combine the teachings of Kent ('694) with those of Crook ('754).

As noted above, Kent relates to ballistic targets and marksmanship targets (see "Field of the Invention," Col. 1, lines 3–4). More specifically, Kent is directed to solving the problem of prior art "lifelike targets" (see Col. 1, line 34) not being very durable or re-usable to any great extent (see Col. 1, lines 39–42) when shot at. Kent further teaches that its ballistic targets are preferably formed into a three-dimensional (3D) humanoid figure that can be set in a standing position, can hold a desired weapon, or can be placed into various threatening postures (see Col. 4, line 42, to Col. 5, line 19). A 3D humanoid figure is nothing like a generally flat and planar access mat used to support vehicles or to provide a platform over unstable terrain, as described and claimed in the present application.

Kent does not teach a "mat" of any kind, let alone an "access mat" for forming a roadway or pathway for vehicles and people or to provide a platform over unstable terrain. In fact, the word "mat" does not appear anywhere in Kent. The words "access," "road," "roadway," "path," "pathway," "vehicle," "platform," "terrain," and "ground" are likewise absent in Kent. Instead, the specification of Kent mentions "target," "ballistic fabric," "three dimensional humanoids," and "bullets."

Because Kent does not teach anything with respect to forming a "roadway" for "vehicles" or with respect to providing a "platform" over unstable "terrain," it simply is not directed to the problem at hand. For at least these reasons, applicants respectfully submit that a person of ordinary skill in the art of "access mats" would not look to Kent for anything.

Applicants respectfully note that the Office Action did not list any reasons why one of ordinary skill in the art of "access mats" would look to Kent's humanoid ballistic targets when designing an access mat to support a vehicle over unstable terrain. As explained by the U.S. Supreme Court in *KSR*, an Examiner must establish "an apparent reason to combine . . . known elements," must provide "some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness," and must "identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does." (See *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007).)

An Examiner must also make "explicit" this rationale of "the apparent reason to combine the known elements in the fashion claimed," including a detailed explanation of "the effects of demands known to the design community or present in the marketplace" and "the background knowledge possessed by a person having ordinary skill in the art." (*KSR*, Opinion at page 14). Applicants respectfully submit that anything less than such an explicit analysis is not sufficient to support a *prima facie* case of obviousness.

Moreover, the U.S. Patent and Trademark Office's own internal memorandum on *KSR*, dated May 3, 2007 (Margaret Focarino, Deputy Commissioner of Operations, USPTO "Supreme Court decision on *KSR Int'l Co. v. Teleflex, Inc.*," memo to USPTO technology art unit directors, May 3, 2007), states, in bold, that *"in formulating a rejection under 35 U.S.C. § 103(a) based upon a combination of prior art elements, it remains necessary to identify the reason why a person of ordinary skill in the art would have combined the prior art elements in the manner claimed."*

Applicants respectfully submit that, because the Office Action did not list any reasons why one of ordinary skill in the art of access mats would look to Kent's 3D humanoid ballistic targets when designing an access mat as claimed, the Office Action did not comply with the

Office's own internal instructions, let alone with the requirements laid out by the Supreme Court in *KSR Int'l Co. v. Teleflex*.

Accordingly, for at least the aforementioned reasons, reconsideration and withdrawal of the rejection of Claims 1 and 4–10 under 35 U.S.C. § 103(a) is respectfully requested.

#### New Claims

Applicants have added one new independent claim (Claim 11) and seven new dependent claims (Claims 12–18) which depend from new Claim 11. These claims add no new matter and merely act to more clearly distinguish the various novel and inventive features of the claimed invention.

In fact, new Claim 11 is identical to applicants' amended Claim 1 filed January 30, 2009. New Claims 12–18 are identical to Claims 4–10, except that they now depend from new Claim 11. As such, these claims add no new matter, were previously presented to the Examiner, and therefore will not require additional searching by the Examiner.

Applicants most respectfully submit that, for the reasons given above, the reliance on Kent ('694) is improper and that a person of ordinary skill in the art of "access mats" would not combine the teachings of Kent ('694) for a "ballistic target" with those of Crook ('754). Moreover, the Office Actions to date have not provided any reasons why one of ordinary skill in the art of access mats would look to Kent's 3D humanoid ballistic targets when designing an access mat to support a vehicle over unstable terrain.

Applicants also respectfully submit that Crook ('754) fails to teach all of the claimed features of new Claim 11, including failing to teach "a rigidifying grid of reinforcing wire embedded within the rubber slab and consisting of a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed side edges for most of the width of the

rubber slab and a plurality of parallel spaced wires embedded within the rubber slab and extending between the opposed end edges for most of the length of the rubber slab."

Accordingly, for at least the above-noted reason, new Claims 11-18 are in condition for allowance.

Standards for Patentability

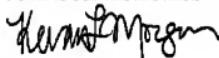
"An applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. It is the Commissioner's duty (acting through the examining officials) to determine that all requirements of the Patent Act are met. The burden is on the Commissioner to establish that the applicant is not entitled under the law to a patent . . . In rejecting an application, factual determinations by the PTO must be based on a preponderance of the evidence, and legal conclusions must be correct." *In re Oetiker*, 977 F.2d 1443, 1449, 24 U.S.P.Q.2d 1443, 1447 (Fed. Cir. 1992) (Judge Plager concurring).

CONCLUSION

In view of the foregoing amendments and arguments, it is respectfully submitted that the present application is in condition for allowance. Applicants, therefore, request the early issue of a Notice of Allowance.

Respectfully submitted,

CHRISTENSEN O'CONNOR  
JOHNSON KINDNESS<sup>PLLC</sup>



Kevan L. Morgan  
Registration No. 42,015  
Direct Dial No. 206.695.1712

KLM:kjb

LAW OFFICES OF  
CHRISTENSEN O'CONNOR JOHNSON KINDNESS<sup>PLLC</sup>  
1420 Fifth Avenue  
Suite 2800  
Seattle, Washington 98101  
206.682.8100